



**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2009 SENATE BILL 190**

1     **AN ACT** *to create* 134.49 of the statutes; **relating to:** renewals and extensions  
2     of business contracts.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3     **SECTION 1.** 134.49 of the statutes is created to read:

4     **134.49 Renewals and extensions of business contracts. (1) DEFINITIONS.**

5     In this section:

6         (a) “Business contract” means a contract that is entered into for the lease of  
7     business equipment, if any of the business equipment is used primarily in this state,  
8     or for providing business services, but only if the contract is for the direct benefit of  
9     the end user of the business equipment or business services. “Business contract”  
10    does not include any of the following:

11         1. A contract in which a customer agrees to purchase from a seller an  
12    undetermined amount of business services or lease from the seller an undetermined

1 amount of business equipment, and agrees to pay the seller based on the amount of  
2 business services received or business equipment leased, subject to a predetermined  
3 minimum payment in a 12-month period specified in the contract, if the  
4 predetermined minimum payment is \$250,000 or more.

5 2. A contract for the lease or purchase of real property.

6 3. A contract for the lease of a vehicle for which a certificate of title has been  
7 issued under ch. 342.

8 4. A contract for the lease of medical equipment.

9 5. A contract derived from a tariff issued by an energy utility, as defined in s.  
10 196.027 (1) (c).

11 6. A contract for the lease of equipment that is for personal, family, or household  
12 purposes.

13 7. A contract for the purchase of services that are for personal, family, or  
14 household purposes.

15 8. A contract for the lease or purchase of access service, as defined in s. 196.01  
16 (1b).

17 9. An interconnection agreement, as defined in s. 196.01 (3b), or a contract or  
18 agreement offered by a telecommunications utility, as defined in s. 196.01 (10), to  
19 meet obligations imposed on the telecommunications utility under 47 USC 151 to  
20 276.

21 10. A contract for the lease or purchase of telecommunications service, as  
22 defined in s. 196.01 (9m), including commercial mobile service, as defined in s. 196.01  
23 (2i), if the contract is derived from a tariff issued by a telecommunications provider,  
24 as defined in s. 196.01 (8p), or if the contract permits the lessee or purchaser to  
25 terminate the contract after an automatic renewal by giving written notice, permits

1 the termination to take effect not more than one month after receipt of the written  
2 notice, and permits a termination without liability for fees or penalties other than  
3 a payment for services or equipment used during the period before the termination  
4 takes effect, if the amount of the payment is one of the following:

5 a. The amount of the periodic payment due under the contract multiplied by  
6 the number of periods during which the services or equipment are provided before  
7 the termination takes effect.

8 b. If the contract does not provide for periodic payments, a portion of the  
9 amount due under the contract that is proportional to the portion of the renewed  
10 contract term that elapsed before the termination takes effect.

11 11. A contract that permits a customer to terminate an automatically renewed  
12 or extended contract period by giving the seller notice of the customer's intention to  
13 terminate the contract period, if the contract does not require the customer to give  
14 notice to the seller more than one month before the date of the customer's intended  
15 termination.

16 12. A contract to which a federal, state, or local government entity is a party.

17 13. A contract between a cooperative association organized under ch. 185 and  
18 a member of the cooperative, or a contract under which a cooperative association  
19 organized under ch. 185 is a seller.

20 14. A contract for the lease, maintenance, repair, service, or inspection of  
21 elevator or escalator systems, including mechanical and electrical components of  
22 such systems when built into real property.

23 (b) "Customer" means a person who conducts business in this state and who is  
24 the lessee under a business contract that is entered into for the lease of business

1 equipment or the purchaser under a business contract that is entered into for the  
2 purchase of business services.

3 (c) “Seller” means the provider of a business service or the lessor of business  
4 equipment under a business contract.

5 **(2) DISCLOSURE REQUIRED.** (a) Subject to par. (d), if a business contract that is  
6 entered into, modified, or renewed after the effective date of this subsection .... [LRB  
7 inserts date], provides that the contract will be automatically renewed or extended  
8 for an additional period unless the customer declines renewal or extension, and the  
9 duration of the additional period is more than one month, the seller shall do one of  
10 the following:

11 1. At the time the customer enters into the contract, present to the customer  
12 a copy of a form including the disclosures required under par. (b) and obtain the  
13 customer’s signature on the form.

14 2. Include the disclosures required under par. (b) in the contract in a  
15 conspicuous manner and obtain the customer’s initials on the contract on a page on  
16 which a disclosure appears.

17 (b) A disclosure required under par. (a) shall contain all of the following:

18 1. A statement that the contract will be renewed or extended unless the  
19 customer declines renewal or extension.

20 2. A statement indicating the duration of the additional contract period that  
21 would result from an automatic renewal or extension period.

22 3. A statement indicating whether an increase in charges to the customer will  
23 apply upon an automatic renewal or extension.

24 4. A description of action the customer must take to decline renewal or  
25 extension.

1           5. The date of the deadline for the customer to decline renewal or extension.

2           (c) If a seller fails to comply with par. (a), an automatic renewal or extension  
3 provision in the contract is not enforceable, and the contract terminates at the end  
4 of the current contract term.

5           (d) Paragraph (a) does not apply to a contract in effect on the effective date of  
6 this paragraph .... [LRB inserts date], or to subsequent renewals of such a contract.

7           **(3) NOTICE REQUIRED.** If a business contract that has an initial term of more  
8 than one year provides that the contract will be automatically renewed or extended  
9 for an additional term of more than one year, unless the customer declines renewal  
10 or extension, and the deadline for the customer to decline renewal or extension of the  
11 contract is more than 60 days after the effective date of this subsection .... [LRB  
12 inserts date], the provision is not enforceable against the customer and the contract  
13 will terminate at the end of the current contract term unless the seller provides to  
14 the customer, at least 15 days but not more than 60 days before the deadline for the  
15 customer to decline renewal or extension, a written notice containing all of the  
16 following:

17           (a) A statement that the contract will be renewed or extended unless the  
18 customer declines renewal or extension.

19           (b) The deadline for the customer to decline renewal or extension.

20           (c) A description of any increase in charges to the customer that will apply after  
21 renewal or extension.

22           (d) A description of action that the customer must take to decline extension or  
23 renewal.

24           **(4) MANNER OF GIVING NOTICE.** A seller or a person acting on behalf of the seller  
25 shall give the written notice required under sub. (3) by any of the following methods:

1 (a) By mailing a copy of the notice by regular U.S. mail to the customer at the  
2 customer's last-known business address, unless the contract requires the customer  
3 to notify the seller by certified mail of the customer's intent to cancel.

4 (b) By mailing a copy of the notice by registered or certified mail to the customer  
5 at the customer's last-known business address.

6 (c) By giving a copy of the notice personally to an owner, officer, director, or  
7 managing agent of the customer's business.

8 (d) By including the notice on the first page of a monthly invoice sent to the  
9 customer. Notice under this paragraph shall be prominently displayed in bold face  
10 type and in a type size no smaller than 12-point.

11 (e) By sending a facsimile to the customer to the customer's last-known  
12 facsimile number, if the contract permits the customer to use this method to notify  
13 the seller that the customer declines renewal or extension of the contract.

14 (f) By sending an electronic mail message to the customer at the customer's  
15 last-known electronic mail address, if the contract permits the customer to use this  
16 method to notify the seller that the customer declines renewal or extension of the  
17 contract.

18 (g) By sending the notice via a recognized overnight courier service, if the  
19 contract permits the customer to use this method to notify the seller that the  
20 customer declines renewal or extension of the contract.

21 **(5) UNENFORCEABLE TERMS.** No business contract between a seller and a  
22 customer that is entered into, modified, or renewed after the effective date of this  
23 subsection .... [LRB inserts date], may require that the customer permit the seller to  
24 match any offer the customer receives from or makes to another seller for services  
25 to be provided after the end of the stated term of the contract or renewal period of the

1 contract. A provision in a business contract that violates this subsection is void and  
2 unenforceable.

3 **(6) REMEDIES.** (a) Any of the following customers may bring an action or  
4 counterclaim for damages against a seller:

5 1. A customer who has notified a seller that the customer declines renewal or  
6 extension of a business contract to which sub. (3) applies, if the seller has failed to  
7 give notice as required under subs. (3) and (4) and the seller has refused to terminate  
8 the contract as requested by the customer.

9 2. A customer against whom a seller has attempted to enforce a provision in a  
10 business contract that is unenforceable under sub. (5).

11 (am) Notwithstanding par. (a) 1., if a seller who fails to give to a customer a  
12 notice required under sub. (3) subsequently receives notice that the customer  
13 declines renewal or extension and agrees to terminate the contract as of the date the  
14 customer notified the seller, the customer is responsible for charges incurred by the  
15 customer under the contract before the date on which the customer notified the seller  
16 and the customer may not bring an action against the seller based on the seller's  
17 failure to provide the required notice, unless the seller's failure to provide the  
18 required notice was willful or malicious.

19 (b) A customer who prevails in an action or counterclaim under par. (a) is  
20 entitled to damages in either of the following amounts:

21 1. An amount that equals twice the amount of the damages incurred by the  
22 customer.

23 2. An amount that equals twice the amount of the periodic payment specified  
24 in the contract or \$1,000, whichever is less.

1 (c) Notwithstanding the limitations in s. 814.04 (1), the court shall award a  
2 customer who prevails in an action or counterclaim under this subsection costs,  
3 including reasonable attorney fees.

4 (d) A seller is not liable in an action or counterclaim under this subsection if  
5 the court finds either of the following:

6 1. All of the following:

7 a. The seller has established and implemented written procedures for  
8 complying with this section.

9 b. The seller's failure to comply with subs. (3) and (4), or the seller's attempt  
10 to enforce a provision that is void and unenforceable under sub. (5), was not willful  
11 or malicious.

12 c. The seller has refunded any amounts paid by the customer after the date of  
13 the renewal or extension until the date on which the business contract is terminated.

14 2. The customer requested, in writing, renewal or extension of the contract that  
15 is the basis for the customer's action or counterclaim against the seller, and the  
16 customer was aware of the terms under which the contract would be renewed or  
17 extended.

18 **SECTION 3. Effective date.**

19 (1) This act takes effect on the first day of the 12th month beginning after  
20 publication.

21 (END)